



STATE OF NEW JERSEY

In the Matter of Joshua Berry, Police
Officer (S9999U), Gloucester
Township

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-2671

List Removal Appeal

ISSUED: AUGUST 16, 2019 (SLK)

Joshua Berry appeals his removal from the eligible list for Police Officer (S9999U), Gloucester Township on the basis that he falsified his application.

The appellant took the open competitive examination for Police Officer (S9999U), Gloucester Township, which had an August 31, 2016 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant falsified his application. Specifically, a review of the appointing authority’s background report indicates that the appellant provided a five-year driver’s abstract and this abstract only indicated that the appellant’s driver license had been suspended once, November 16, 2014 through December 29, 2014. However, the investigation revealed that his driver license had also been suspended on September 8, 2013 through February 1, 2014 and November 25, 2012 through January 16, 2013.

On appeal, the appellant explains that he indicated on his application that his license had been suspended in the past. He states that he ordered his driver’s abstract from the Motor Vehicle Commission and it showed a suspension due to paying a surcharge late. During his interview, the appellant informed the investigator that he only knew of his license being suspended one time as indicated in the abstract which he supplied. Thereafter, the investigator informed him that his driver’s license previously had been suspended for the same reason. The appellant responded that his omission of the information was a mistake and he did not do it on

purpose. He highlights that he has worked as a Police Officer for four years and has never falsified or lied on any report or under oath nor has he received any major disciplinary actions against him. The appellant asserts that as a Police Officer, he understood the consequences of making a false statement and presents this to support his assertion that the omission was unintentional.

In response, the appointing authority presents its background investigation revealed that the appellant's driver's license was suspended three times while he only indicated one suspension, the most recent one on his five-year driver's abstract. The appointing authority believes that the appellant intentionally was deceitful. It explains that restoring one's driver license from suspension is both costly and time consuming. Therefore, the appointing authority argues that it is unreasonable that the appellant forgot these two other suspensions.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the removal of an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Civil Service Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

Concerning the appellant's statement that he did not intentionally omit the driving license suspensions that were not listed on his five-year driver's abstract, it is noted that candidates are responsible for the accuracy of their applications. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Further, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*,

Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant.

In this matter, a review of the appellant's certified driver's abstract indicates that he received numerous motor vehicle violations between 2010 and 2014. This led to his driver's license being suspended three separate times between 2012 and 2014. In other words, the appointing authority could have removed the appellant's name from the list for an unsatisfactory driving record. In this regard, it is recognized that a Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a Police Office is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Additionally, as the last suspension ended on December 29, 2014, which was less than two years prior to the August 31, 2016 closing date, there was insufficient time for him to demonstrate rehabilitation. Therefore, even if there was no intent to deceive, in light of the appellant's driving record, his failure to disclose his two additional driver's license suspensions was material. At minimum, the appointing authority needed this information to have a complete understanding of his background in order to properly evaluate his candidacy. *In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017).

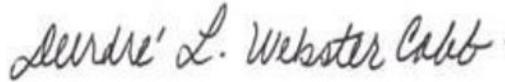
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999U), Gloucester Township eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 14th DAY OF AUGUST, 2019



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